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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 345

JOHN P. HAMRICK,
Appellant,

vs.

STATE OF ALABAMA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF ALABAMA

JURISDICTIONAL STATEMENT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. .....

JOHN P. HAMRICK,
Appellant,

vs.

STATE OF ALABAMA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF ALABAMA

JURISDICTIONAL STATEMENT

TO THE HONORABLES THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Appellant appeals to this Honorable Court the judgment and opinion of the Supreme Court of Alabama affirming a judgment of the Circuit Court of Jefferson County, Alabama, denying and dismissing appellant's petition for writ of habeas corpus, and holding Alabama's Criminal Sexual Psychopathic Persons statute to be constitutional. Appellant respectfully submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial federal question is presented.

OPINIONS BELOW

The order of the Circuit Court of Jefferson County, Alabama, not reported (Appendix A); the judgment of the Circuit Court of Jefferson County, Alabama, not reported (Appendix B); the judgment and opinion of the Supreme Court of Alabama, not yet reported (Appendix C); the order of the Supreme Court of Alabama, not yet reported (Appendix D).

JURISDICTION

On November 7, 1966, appellant was committed, by an order of the Circuit Court of Jefferson County, Alabama (Appendix A), as an alleged criminal sexual psychopathic person, to the custody of the Warden of the County Jail of Jefferson County, Alabama, without bail, pursuant to provisions of Act No. 981, Acts of Alabama 1951, as amended; Title 15, Sections 434-442, Code of Alabama, 1940 (Recomp. 1958) (Criminal Sexual Psychopathic Persons) (Appendix E). On November 8, 1966, appellant challenged, by a petition for writ of habeas corpus, the validity and legality of his commitment and detention on the grounds, inter alia, that the Alabama statute, pursuant to which appellant had been committed, was unconstitutional. After a hearing, the Circuit Court of Jefferson County, Alabama, entered a judgment (Appendix B) denying and dismissing appellant's petition for writ of habeas corpus. On appeal, the Supreme Court of Alabama affirmed (Appendix C), holding that the Alabama statute was not unconstitutional. Appellant's application for rehearing was denied on June 22, 1967 (Appendix D). On June 22, 1967, notice of appeal to the Supreme Court of the United States was filed with the Clerk of the Supreme Court of Alabama.

The jurisdiction of this court is invoked under Title 28, United States Code, Section 1257 (2).

The following decisions sustain the jurisdiction of the Supreme Court to entertain this appeal:

Mills v. *Alabama*, 384 U.S. 214, 16 L. Ed. 2d 484, 86 S. Ct. 1434.

Bantam Books, Inc. v. *Sullivan*, 372 U.S. 58, 9 L. Ed. 2d 584, 83 S. Ct. 631.

Staub v. *Baxley*, 355 U.S. 313, 2 L. Ed. 2d 302, 78 S. Ct. 277.

STATUTES INVOLVED

Act No. 981, Acts of Alabama 1951, p. 1655, as amended (Criminal Sexual Psychopathic Persons); Title 15, Sections 434-442, Code of Alabama, 1940 (Recomp. 1958). Text Appendix E).

QUESTIONS PRESENTED

1. Does Alabama's Criminal Sexual Psychopathic Persons statute meet the requirements of Federal Due Process?

2. Did the Supreme Court of Alabama erroneously construe and apply the decisions of the United States Supreme Court in *Minnesota* v. *Probate Court*, 309 U.S. 270, 84 L. Ed. 744, 60 S. Ct. 523, and *Specht* v. *Patterson*, ____ U.S. ____, 18 L. Ed. 2d 326, 87 S. Ct. ____?

3. May constitutional infirmities apparent on face of statute be cured by constitutional application?

4. Was alleged criminal sexual psychopathic person denied procedural due process by commitment for examination without notice?

STATEMENT OF THE CASE

Appellant was arrested, and later indicted, on two separate charges of rape by two different women. Preliminary trials on both charges were held on April 13, 1966. At the preliminary trials only the prosecuting witnesses testified. On September 12, 1966, one of the rape cases was tried before a jury in the Circuit Court of Jefferson County, Alabama, and resulted in a verdict of "Not Guilty". The other case was set for trial on November 7, 1966, at which time the District Attorney filed a petition for the commitment and examination of the appellant (Original R. 7) as provided in Title 15, Sections 434-442, Code of Alabama, 1940 (Recomp. 1958) (Appendix E).

Appellant was thereupon committed to the County Jail of Jefferson County, Alabama, without bail, by an order of the Circuit Court of Jefferson County, Alabama (Appendix A).

On November 8, 1966, appellant filed in the Circuit Court of Jefferson County, Alabama, a petition for writ of habeas corpus (Original R. 4-5) challenging the validity and legality of his commitment on the grounds, inter alia, that the statute pursuant to which he was committed was unconstitutional.

After a hearing on appellant's petition, at which hearing the validity and constitutionality of the statute was at issue, an order denying and dismissing appellant's petition as being without merit was entered (Original R. 13, Appendix B).

The Supreme Court of Alabama affirmed (Appendix C), relying on the decision of this Court in *Minnesota* v.

Probate Court, 309 U.S. 270, 84 L. Ed. 744, 60 S. Ct. 523, in upholding the constitutionality of the Alabama statute.

On June 22, 1967, appellant's application for rehearing was denied (Appendix D). Notice of appeal to the Supreme Court of the United States was filed with the clerk of the Supreme Court of Alabama on June 22, 1967 (Original R. 25-26).

It has been appellant's contention throughout the habeas corpus proceedings below, as hereinabove described, and in the Supreme Court of Alabama that the Alabama statute is lacking the protections guaranteed an accused by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT

Appellant first raised the issue of the constitutionality of the statute pursuant to the provisions of which he had been committed, in a petition for a writ of habeas corpus filed in the Circuit Court of Jefferson County, Alabama, on November 8, 1966 (Original R. 4-5). In its judgment (Appendix B) entered on that date, the Circuit Court of Jefferson County, Alabama, stated:

> "... This matter, by agreement of all the above persons, is submitted to the Court on the sole question of the legal validity and constitutionality of the proceedings provided for in Title 15, Sections 434 through 442 of the Code of Alabama of 1940, as amended, under which statute the petitioner had been committed to the County Jail." (Original R. 13).

The Circuit Court, in its opinion, then found appellant-petitioner's contentions, including the unconstitutionality of the statute, to be without merit. Relief was denied and appellant-petitioner appealed to the supreme Court of Ala-

bama. The unconstitutionality of the statute was submitted and argued to the Supreme Court of Alabama, which affirmed, stating, "We are not willing to say that the statute is unconstitutional on its face." (Appendix C).

The jurisdiction of this Court, is, therefore, properly invoked, as the state court judgment sought to be reviewed upheld a state statute against the contention that, on its face and as applied, the statute violated the Federal Constitution. 28 United States Code, Section 1257 (2). *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 9 L. Ed. 2d 584, 83 S. Ct. 631 (Headnote 1).

While it might be argued that the Alabama Court's decision rested on non-federal grounds, inasmuch as the court noted, in its opinion, that no hearing had yet been held because the proceedings had not reached that stage, appellant contends that such an argument is without merit and relies on the authority of *Staub* v. *Baxley*, 355 U.S. 313, 2 L. Ed. 2d 302, 78 S. Ct. 277, wherein it was held that it was within the province of this Court ". . . to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-federal grounds of decision that were without any fair or substantial support. . . ."

The situation thus presented closely resembles that considered by this Court in *Mills* v. *Alabama*, 384 U.S. 214, 16 L. Ed. 2d 484, 86 S. Ct. 1434, wherein it was asserted that a judgment of the Alabama Supreme Court upholding the constitutionality of a statute was not a final judgment so as to be properly within this Court's appellate jurisdiction since the judgment did not literally end the case. This Court rejected that assertion as being without merit.

The Supreme Court of Alabama, in its opinion, sought to distinguish the decision of this Court in the recent case of *Specht* v. *Patterson*, ... U.S. ....., 18 L. Ed. 2d 326, 87 S. Ct.

....., wherein this Court held unconstitutional Colorado's Sex Offenders Act, Colo. Rev. Stat. Ann., Sections 39-19-1 to 10 (1963), with the gloss that the Colorado statute allowed an accused to be sentenced without an adversary hearing. Appellant submits that the only relevant distinguishing feature in the Alabama and Colorado statutes is that the Colorado procedure is "triggered" by a conviction of a sex offense, whereas the Alabama procedure is "triggered" by a charge of such an offense. This evil is much more invidious than that condemned in *Specht* v. *Patterson*, supra, wherein the Supreme Court denounced the Colorado procedure, inter alia, for its denial of an accused's right of confrontation.

There is no provision in the Alabama statute providing for the exercise of appellant's right to confront and cross-examine the witnesses on whose complaints the sex offense charges were based or the psychiatrists appointed by the Circuit Court to examine appellant. Under the statute, both on its face and as construed by the Supreme Court of Alabama in the opinion sought to be reviewed by this appeal, a circuit judge supplants a jury as the trier of fact on the issue of guilt or innocence of the sex offense charged, thereby denying an accused and this appellant the right to a trial by jury on such issue. The Alabama statute also permits an accused to be placed in jeopardy on charges of which he has previously been acquitted by a jury. The Alabama statute makes no provision for appellate review of any finding or order of the Circuit Court in proceedings thereunder. The Alabama statute has no provision for the giving of notice to an accused of the initiation of proceedings pursuant thereto.

Appellant contends, and has so contended in the proceedings as herein described, that he is being deprived of his liberty under a criminal statute that is totally lacking the protections guaranteed by the due process clause

of the Fourteenth Amendment. The State of Alabama has, by invoking the operation of the Criminal Sexual Psychopathic Persons statute, supra (Appendix E), deprived appellant of a trial by jury on the pending indictment charging appellant with the offense of rape; denied appellant the right to confront and cross-examine the witnesses against him; placed appellant in jeopardy on charges of which he has previously been acquitted; caused appellant to be committed to jail in proceedings initiated without notice; caused appellant to be committed to jail without bail; and caused appellant to be committed to jail on hearsay evidence taken at an ex parte proceeding to determine probable cause.

CONCLUSION

For the foregoing reasons, appellant submits that the Alabama statute is so lacking in the safeguards guaranteed him, and others similarly situated, by the due process requirements of the Fourteenth Amendment, as to raise a substantial federal question of sufficient proportion to sustain the jurisdiction of this Court to require plenary consideration of this cause, with briefs on the merits and oral argument, for its resolution.

Respectfully submitted,

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APPENDIX A

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 12765

EX PARTE JOHN P. HAMRICK

The State of Alabama, by and through its District Attorney and Deputy District Attorney, Hon. Earl Morgan and Hon. Burgin Hawkins, pursuant to Sections 434 through 442 of Title 15 of the Code of Alabama as amended, files in this Court in this cause a petition in writing setting forth facts tending to show that John Hamrick, the defendant in this cause, is a criminal sexual psychopathic person and defendant, by and through his attorneys Hon. Wm. B. McCollough, Sr. and Wm. B. McCollough, Jr. files demurrer to said petition, and same being submitted and argued, said demurrer is hereby overruled and defendant excepts. Now, therefore, said petition being and it is hereby considered by the Court, the defendant, John Hamrick, is hereby committed to the county jail of Jefferson County, Alabama, and the jailor or warden of Jefferson County, Alabama, is commanded to receive him into custody and to detain him until he is legally discharged or otherwise discharged by order of this court.

Done this 7th day of November, 1966.

/s/ Gibson, Judge

APPENDIX B

Judgment of the Court HC 651

EX PARTE THE STATE OF ALABAMA vs. JOHN P. HAMRICK	Habeas Corpus Proceedings Hon. Wallace Gibson, Judge Presiding

This the 8th day of November, 1966, came Earl C. Morgan, District Attorney, by Deputy District Attorney Burgin Hawkins, who prosecutes for the State of Alabama, and also came the petitioner in his own proper person and by attorney, William B. McCollough, Jr., and this cause being presented to the Court on the petition for writ of habeas corpus, writ of habeas corpus and sheriff's return thereto. This matter, by agreement of all of the above persons, is submitted to the Court on the sole question of the legal validity and constitutionality of the proceedings provided for in Title 15, Sections 434 through 442 of the Code of Alabama of 1940, as amended, under which statutes the petitioner had been committed to the County Jail. The same being duly considered by the Court, the Court finds the contentions of petitioner are without merit. It is therefore ordered and adjudged by the Court that the relief is hereby denied, the writ is hereby dismissed and the petitioner remanded to the custody of the Sheriff of Jefferson County, Alabama, pending further orders of this Court or until otherwise discharged by Law.

The said petitioner herein gives Notice of Appeal to the Supreme Court of Alabama.

APPENDIX C

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1966-67

John P. Hamrick

6 Div. 406 v.

State of Alabama

Appeal from Jefferson Circuit Court

MERRILL, JUSTICE.

This appeal is from a judgment denying and dismissing a petition for habeas corpus after a hearing.

On November 7, 1966, the District Attorney of Jefferson County filed a petition in the circuit court for the commitment and examination of appellant, seeking to have him declared a criminal sexual psychopathic person under the provisions of Act No. 981, Acts of Alabama 1951, p. 1655, as amended, and listed in the 1958 Recompilation as Tit. 15, Sections 434-442.

A demurrer to the petition was filed, argued and overruled, and still on the same day, November 7, a petition for habeas corpus was filed, heard and denied in this court.

On November 8, the trial court appointed two psychiatrists, admittedly "qualified" in appellant's brief, to make a personal examination of appellant and to file with the court a report in writing of the results of their examination together with their conclusions and recommendations within a reasonable time.

Later that day, petitioner presented a writ of habeas corpus seeking admission to bail or, in the alternative, to being discharged, which, after a hearing, was denied and dismissed. An appeal was taken immediately and the transcript was filed that afternoon in this court. On the morning of November 9, 1966, this court set appellant's bond at $5,000 and he was released that afternoon upon posting bail.

Prior to all the events listed supra, appellant had been arrested, and later indicted, on two separate charges of rape by two different women. Preliminary trials on both charges were held on April 13, 1966. At that time, only the woman alleged to have been raped testified in each case. Bond was set in each case and one case was tried on September 12, 1966, which resulted in a verdict of "not guilty." The other case was set for trial on November 7, 1966, but on that date the District Attorney filed the petition for the commitment and examination of appellant as a criminal sexual psychopathic person.

Appellant argues that the statute, listed in the 1958 Recompilation as Tit. 15, Sections 434-442, as amended, is unconstitutional on its face. He argues that a district attorney could invoke the operation of statute by merely filing a statement that he believes an accused is a criminal sexual psychopathic person. This does not comply with the requirements of Section 436, as amended, and we do not believe any judge in this state would order a commitment or examination on such a statement. But even if such an order were made, it could be reviewed. But such is not the case here.

The District Attorney attached to his petition a transcript of the testimony of the complaining witnesses in each of the preliminary hearings on the rape charges. This was *all* the evidence in those proceedings and *all* the evidence

before us. We will not delineate it here because it may be diffgrent whenever there is a hearing. But we do state that the only evidence before us is amply sufficient to support the charge that appellant is a criminal sexual psychopathic person, and was ample to justify the order of the circuit judge for the examination, and if believed, is ample to support an order of commitment to protect society and to protect appellant.

Assuming, for the sake of argument, that appellant was not guilty of rape because each of the prosecuting witnesses consented to the sexual intercourse, there is still enough evidence of indignities and acts of perversion by appellant to justify the charge that he is a criminal sexual psychopathic person.

Appellant argues that Section 437, as amended, does not say when the report of the psychiatrists should be filed with the court, but he admits that the circuit judge ordered this report to be filed within a reasonable time.

Appellant also argues that there are no "guidelines" for the hearing provided for in Section 438 and no requirement for counsel for the person accused. We note that this hearing has not yet been held because the proceedings have not reached that stage. The answer to his contentions is that this "hearing" is a judicial hearing surrounded by all the requirements of due process. And certainly appellant is not going to be afflicted with these supposed objections. He is ably represented, his hearing will be before a qualified judge and any action taken can be reviewed by an appellate court.

We concede that it is possible that some of the dire consequences foreseen by appellant in some other case, not his, might result; but any arbitrary, capricious abuse of due process may be corrected in an appellate court. It is possible that there can be an unconstitutional application of a statute

permitting the involuntary commitment or detention of a person, but this possibility does not render the statute unconstitutional.

Appellant cites the case of *Specht* v. *Patterson*, 35 L. W. 4340, decided by the Supreme Court of the United States on April 11, 1967, which struck down the Sex Offenders Act of Colorado. But that act allowed an accused to be sentenced without an adversary hearing.

Our statute is similar to the Minnesota statute, the constitutionality of which was upheld in *Minnesota* v. *Probate Court*, 309 U.S. 270, 60 S. Ct. 523, 84 L. Ed. 744. In *Specht* v. *Patterson*, supra, the Federal Supreme Court said: "The case is therefore quite unlike the Minnesota statute we considered in *Minnesota* v. *Probate Court*, 309 U.S. 270, where in a proceeding to have a person adjudged a 'psychopathic personality' there was a hearing where he was represented by counsel and could compel the production of witnesses on his behalf."

We are not willing to say that the statute is unconstitutional on its face. As already stated, no hearing has yet been had on the merits of the charge.

AFFIRMED.

Livingston, C. J., Simpson and Harwood, JJ., concur.

FILED JUNE 1, 1967. Supreme Court of Alabama, Louise L. Holt, Assistant Clerk.

APPENDIX D

THE SUPREME COURT OF ALABAMA—THURSDAY, JUNE, 22, 1967

THE COURT MET PURSUANT TO ADJOURNMENT

PRESENT: ALL THE JUSTICES

6th Div. 406

John P. Hamrick
v.
State of Alabama
} JEFFERSON CIRCUIT COURT

IT IS ORDERED that the application for rehearing filed on June 6, 1967, be and the same is hereby overruled.

APPENDIX E

ARTICLE 4.

Criminal Sexual Psychopathic Persons

Section 434. Definitions.—(a) Any person who is suffering from a mental disorder but is not mentally ill or feebleminded to an extent making him criminally irresponsible for his acts, such mental disorder being coupled with criminal propensities to the commission of sex offenses, is hereby declared to be a criminal sexual psychopathic person within the meaning of this article. (1961, p. 1461, appvd. Sept. 8, 1961.)

(b) A qualified psychiatrist within the meaning of this article is a reputable physician licensed to practice in the state of Alabama who has limited his professional practice exclusively to the diagnosis and treatment of mental and nervous disorders for a period of not less than three years. (1951, p. 1655, Section 1, appvd. Sept. 12, 1951.)

Section 435. Jurisdiction.—Jurisdiction of criminal sexual psychopathic persons charged with a criminal sex offense is vested in the circuit courts of the state, or special juvenile or juvenile and domestic relations courts wherein a person is charged with contributing to the delinquency of a minor, for the purpose of conducting hearings for commitment and detention of such persons as hereinafter provided. (1951, p. 1655, Section 2, appvd. Sept. 12, 1951.)

Section 436. Petition filed by prosecuting solicitor.—When any person is charged with or convicted of a criminal sex offense and there is reason to believe that such person is a criminal sexual psychopathic person, the solicitor prosecuting the case or the attorney general may in his sound

discretion file in such courts, as a part of the proceeding and before the imposition of sentence or punishment, a petition in writing setting forth the facts tending to show that such person is a criminal sexual psychopathic person. (1951, p. 1655, Section 3, appvd. Sept. 12, 1951; 1961, p. 1461, appvd. Sept. 8, 1961.)

Section 437. Psychiatric examination of alleged criminal sexual psychopathic person; liability for expenses.—Upon the filing of such petition the court shall issue a mittimus or commitment of such person to the county jail. The court shall then appoint two qualified psychiatrists who, within ten (10) days from the date of the issuance of the mittimus or commitment, shall make a personal examination of such alleged criminal sexual psychopathic person. Such psychiatrists shall file with the court a report in writing of the results of their examination together with their conclusions and recommendations. In the event that both of such psychiatrists in such report state their conclusions to the effect that such person is a criminal sexual psychopathic person, a hearing shall be held as hereinafter provided, otherwise such person shall be admitted to bail as in other criminal cases. The costs of removing such person and the costs of such examination must be defrayed by the state; and if such person is determined to be a criminal sexual psychopathic person, such costs, together with all other expenses may be recovered by the state from such person, or his estate, or any relative who would have been bound to provide for and maintain him. (1961, p. 1656, Section 4, appvd. Sept. 12, 1951; 1961, p. 1461, appvd. Sept. 8, 1961.)

Section 438. Hearing; commitment to state institution.—Upon a hearing held for that purpose the court shall ascertain whether or not such person is a criminal sexual psychopathic person. Upon such hearing it shall be competent to introduce evidence of the commission by such person of any number of crimes together with the record of the punish-

ment inflicted therefor. If such person is determined to be a criminal sexual psychopathic person, then the court shall commit such person to the director of the department of corrections and institutions for confinement in the Alabama state hospitals or other appropriate state institutions under the jurisdiction of the department of corrections and institutions until such person shall have fully and permanently recovered from such psychopathy. (1951, p. 1656, Section 5, appvd. Sept. 12, 1951.)

Section 439. Authority and responsibility of superintendent of state hospital.—If such person is sent to one of the appropriate Alabama state hospitals by the director of the department of corrections and institutions, then the superintendent thereof shall have complete authority over, custody of, and responsibility for such person. Such superintendent shall have the authority to transfer back to the director of the department of corrections and institutions any such person committed to him when in the judgment of such superintendent, such person cannot or will not benefit from treatment. (1951, p. 1656, Section 6, appvd. Sept. 12, 1951.)

Section 440. Discharge from custody.—Such criminal sexual psychopathic person shall be discharged from the custody of the director of the department of corrections and institutions or the superintendent of the Alabama state hospitals only after he shall have fully recovered from such psychopathy. At any time when he shall appear to have so recovered, a petition in writing setting forth the facts showing such recovery may be filed with the clerk of the court by which he was committed and such court shall proceed to determine whether or not he has fully recovered from such psychopathy. If, following such hearing, such person is found not to have fully recovered from such psychopathy, then the court shall order such person to be

returned to the custody of the director of the department of corrections and institutions or the superintendent of the Alabama state hospitals to be held under the previous commitment of such person. (1951, p. 1656, Section 7, appvd. Sept. 12, 1951.)

Section 441. Probation following discharge.—If, following such hearing, such person is found to have fully recovered from such psychopathy, then the court shall order that such person be discharged from custody and shall place him on probation for such reasonable time as the circumstances may justify. If such person violates the terms of his probation the court shall, in its discretion, either return him to the custody of the director of the department of corrections and institutions for further treatment under the previous commitment or cause him to serve his sentence for the crime for which he was convicted. (1951, p. 1657, Section 8, appvd. Sept. 12, 1951.)

Section 442. Expenses.—The state of Alabama shall defray all expenses of such persons, including the cost of the examination by two psychiatrists provided for in section 437, either while confined at the appropriate Alabama state hospital or other appropriate institution under the jurisdiction of the department of corrections and institutions. The county where the criminal offense is begun shall pay the expense of transferring such person to another county where necessary for the examination provided for under section 437 hereof. The cost of removing such a person to and from the Alabama state hospitals or other state institutions under any of the provisions of this article must be defrayed by the state as in case of removal of prisoners from one county to another. The reasonable expenses of such person in the hospital or other state institution may be recovered by the state from such person, or his estate, or any relative who would have been bound to provide for and maintain him elsewhere. (1951, p. 1657, Section 9, appvd. Sept. 12, 1951.)

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No. 345

JOHN P. HAMRICK,
Appellant

versus

STATE OF ALABAMA,
Appellee

ON APPEAL FROM THE SUPREME COURT
OF ALABAMA

MOTION TO DISMISS OR AFFIRM

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Title 7, Section 764, Code of Alabama 1940, Recompiled 1958 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. _____

JOHN P. HAMRICK,
Appellant

versus

STATE OF ALABAMA,
Appellee

ON APPEAL FROM THE SUPREME COURT OF ALABAMA

MOTION TO DISMISS OR AFFIRM

The appellee moves this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Alabama on the ground that the question presented is so insubstantial as not to need further argument.

ARGUMENT

The appellee wishes to make one point by means of this motion and that is not, as anticipated by the appellant, that the decision of the Supreme Court of Alabama rests on non-federal grounds. The Supreme Court of Alabama has not decided the issue presented by the appeal to it but met the appellant's proposition forsequare and bottomed its opinion on this Court's holding in *Minnesota v. Probate Court*, 309 U. S. 270, 60 S. Ct. 523, 84 L. Ed. 744. The appellee simply states that Minnesota

v. Probate Court, supra, has determined the question presented and that there is no longer a substantial federal question involved.

This Court stated in *Minnesota v. Probate Court*, supra, ". . . For the purpose of deciding the constitutional questions appellant raises we must take the statute as though it read precisely as the highest court of the State has interpreted it. . . . (Citations omitted.)" Therefore, in the instant case, we must look to the interpretation of the Alabama statute given by the Supreme Court of Alabama.

The appellant's main argument throughout these proceedings has been that the Alabama statute does not provide for those requirements of due process which are particularly set out in *Specht v. Patterson*, ____ U. S. ____, 87 S. Ct. ____, 18 L. Ed. 2d 326. The Alabama Supreme Court pointed out that the statute requires a hearing before a determination is made by the trial court as to whether one is a criminal sexual psychopath or not, and ". . . this 'hearing' is a judicial hearing surrounded by all the requirements of due process."

It is a fact that the appellant has not yet been given a hearing but this is because he applied for the writ of habeas corpus before that stage in the proceedings was reached. Therefore, all of the alleged denials of due process with regard to the hearing are merely surmise and conjecture. It has been the appellee's position throughout that the appellant is entitled to (1) the right to be present at the hearing with counsel; (2) the right to an opportunity to be heard; (3) the right to be confronted with witnesses; (4) the right to cross-examination; (5) the right to offer evidence in his behalf; and (6) the right to have adequate findings made upon which appeal can be taken.

supra, however, this is not an analogous case as there was no provision for a hearing in the Colorado statute, rather it was merely a sentencing method. The statement by Mr. Justice Merrill in the opinion now before this Court to the effect that the Alabama statute is quite like the Minnesota statute and quite unlike the Colorado statute is absolutely correct.

We submit that this statement by this Court in *Minnesota v. Probate Court*, supra, "This construction of the statute destroys the contention that it is too vague and indefinite to constitute valid legislation." is directly applicable to this case and that the judgment of the Supreme Court of Alabama is without eorror.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this appeal should be dismissed or that the decision of the Supreme Court of Alabama should be affirmed.

Respectfully submitted,

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of Alabama

CERTIFICATE

I, Robert P. Bradley, one of the attorneys for appellee, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 1st day of August 1967, I served a copy of the foregoing motion to dismiss or affirm, upon Honorable William B. McCollough, Jr., attorney for appellant, 910 Frank Nelson Building, Birmingham, Alabama 35203, by depositing the same in the United States mail, first class postage prepaid, and properly addressed to him at the address given.

Robert P. Bradley

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

HAMRICK *v.* ALABAMA.

APPEAL FROM THE SUPREME COURT OF ALABAMA.

No. 345. Decided October 9, 1967.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question.